



May 11, 2000

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2000-1852

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135090.

The Arlington Police Department (the "department") received a written request for "all investigations concerning [a named former police officer] as a result of any internal or external complaints received by the police department." You have submitted to this office as responsive to the request records pertaining to a single internal investigation that occurred in 1971. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right of privacy.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In Open Records Decision No. 350 (1982), this office addressed the public nature of records pertaining to internal affairs investigations and concluded that

in general, copies of the complaints, as well as the names of complainants, are available to the public. Open Records Decision No. 315 (1982). Certain information contained therein might be excepted by section 3(a)(1), if disclosure would contravene constitutional or common law privacy, but such determinations would have to be made on a case-by-case basis.

ORD 350 at 3; *cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). The information at issue pertains to the former police officer's actions as a public servant, and as such cannot be deemed to be outside the realm of public interest. We conclude, therefore, that the department must release most of the information at issue.

We note, however, that some of the information at issue implicates the privacy interests of third parties, including the complainant. To protect the privacy interests of those individuals, the department must withhold all information, which we have marked, that would tend to identify them. All remaining portions of the requested documents must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

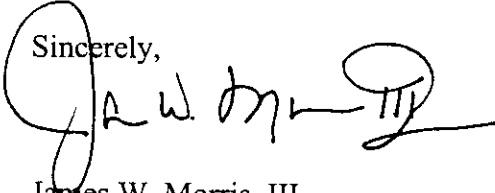
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ljp

Ref: ID# 135090

Encl. Marked documents

cc: Mr. Ron Conover
1106 N. Highway 360, Suite 415
Grand Prairie, Texas 75050
(w/o enclosures)